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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

CALIFORNIA COALITION FOR WOMEN
 PRISONERS et al.,

Plaintiffs,

v.

UNITED STATES OF AMERICA FEDERAL
 BUREAU OF PRISONS et al.,

Defendants.

Case No. 4:23-cv-04155-YGR

**PLAINTIFFS' EMERGENCY NOTICE
 IN RESPONSE TO UNITED STATES'
 NOTICES IN RESPONSE TO DOCS.
 157 and 157-1**

Judge: Hon. Yvonne Gonzalez Rogers

Trial Date: None Set

1 Plaintiffs respectfully submit the following notice in response to the United States' "Notice
 2 in Response to Docs. 157 and 157-1," ECF No. 167, and "Supplemental Notice to Doc. 157," ECF
 3 No. 174, to alert the Court of concerning deficiencies in the Bureau of Prison's response to the
 4 Court's recent orders related to emergency health and safety concerns at the FCI Dublin Satellite
 5 Camp.

6 On February 16, 2024, the Court ordered BOP to "have licensed contractor(s) inspect the
 7 entire [Dublin] Camp for a natural gas leak, black mold, and asbestos." ECF No. 157. On the same
 8 date, in a sealed order, the Court further [REDACTED]

9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED] ECF No. 157-1. On February 23, 2024, BOP filed a half-page "memorandum
 12 regarding skin checks" asserting that Camp residents' skin-related "complaints were not of an
 13 infectious nature" and that "there is no need for further evaluation of an infectious disease
 14 process." ECF No. 174-2.¹

15 Plaintiffs have become aware of details of BOP's underlying clinical methodology that
 16 raise serious questions about the confidence the Court should have in such a definitive and
 17 unsupported conclusion at this stage. As set forth in the declarations of T.R., C.V., and L.R., filed
 18 herewith, the initial "skin checks" at issue were conducted: (1) by a BOP employee who merely

19 _____
 20 ¹ BOP also filed a declaration by Dr. Sayed Hosseini along with exhibits, all under seal. ECF No.
 21 167-3. Plaintiffs have not been provided a copy of the declaration or underlying medical records
 22 because Defendants claim they are unable to do so without the consent of the individuals or a
 23 court order under the Privacy Act. Without seeing these documents, Plaintiffs are not able to
 24 address the contents of these documents. Plaintiffs fully understand that the personal health and
 25 other protected information must be shielded from the public docket and a protective order has
 26 been agreed to for this reason. To the extent that BOP wishes the Court to rely on the contents of
 27 these records to decide litigated issues in this matter, Plaintiffs respectfully request that a copy of
 28 these documents be provided, with appropriate redactions, to Plaintiffs. Plaintiffs note that BOP
 has been directed by Magistrate Judge Tse to submit a proposed Privacy Act order for final
 approval for all related cases, including this one, by no later than March 4. *See M.R. v. FCI
 Dublin*, 22-cv-5137-YGR (lead case), ECF No. 151. BOP should have no basis to withhold any
 information within the Hosseini declaration after entry of the same Privacy Act order in this
 matter. Even without the order fully in place, BOP could redact all identifying personal
 information while still providing Plaintiffs an understanding of the substance of the documents;
 wholesale *ex parte* sealing, by contrast, improperly insulates BOP from the adversarial process.

1 observed residents from four to six feet away from outside their cells for a total of 10-15 seconds
 2 to under a minute, Declaration of T.C. ¶ 4, Declaration of C.A. ¶ 5, Declaration of L.R. ¶ 5; and
 3 (2) in the constant presence of FCI Dublin employees, including camp administrator Agostini,
 4 who made statements meant to influence the BOP medical employee's assessments, T.C. Decl. ¶
 5 4, C.A. Decl. ¶ 5, L.R. Decl. ¶ 5. Though the memorandum filed by the BOP notes that 24
 6 individuals were sent for "further evaluation," these follow up appointments were similarly
 7 cursory. ECF No. 174-2 at 2. As set forth in the declarations:

- 8 • T.R. spent 54 days in SHU "pending investigation," where she was placed in a
 9 damp and musty cell with visible mold, given fresh linens only once and fresh
 10 underwear only every four days; yet despite these dangerous conditions for the
 11 spread of disease, the BOP medical employee's examination consisted of looking at
 12 T.R. for mere seconds from outside her cell. T.C. Decl. ¶¶ 3, 4.
- 13 • C.A., who has in the last month been forced to clean Camp spaces with visible
 14 mold without PPE, has noticed several red marks that have appeared in the last
 15 several weeks. C.A. Decl. ¶¶ 3, 4. Looking at her from outside the cell, the BOP
 16 medical employee immediately dismissed her concern as "a pimple" without
 17 moving any closer than from four to five feet away to visually or otherwise
 18 examine the areas of concern. *Id.* ¶ 5.
- 19 • L.R. was among those sent to the medical office for further evaluation; however—
 20 despite having over 20 unexplained red spots on her body that she knows have only
 21 developed over the past month because she worked in a dermatology clinic and
 22 underwent regular skin checks before her incarceration—the BOP nurse dismissed
 23 her marks as "age spots" after looking at the area for under ten seconds and without
 24 any actual physical examination. L.R. Decl. ¶¶ 3, 4. L.R.'s friend, who was also
 25 sent for further evaluation, shared that in her appointment the nurse merely parroted
 26 an explanation that Agostini, who is not medically trained, gave the nurse—that her
 27
 28

1 sports were from “working out.” *Id.* ¶ 6.²

2 It is highly concerning that BOP would summarily conclude based on such perfunctory and non-
3 independent medical encounters, and absent the results of further laboratory testing, *see id.* ¶ 8
4 (explaining two residents need blood work), that “no further evaluation” is required.

5 Moreover, as the declarations explain, Dublin—which, as the Court is aware, has been
6 ordered to prepare for contractor inspections for mold—has recently been forcing residents to
7 conduct a “deep clean” of the Camp kitchen, including areas of visible mold on walls, ceilings,
8 and appliances, without any PPE. T.C. Decl. ¶ 7; C.A. Decl. ¶ 3. That BOP would seek to prepare
9 for the Court-ordered inspection in this fashion, forcing individuals, including those already
10 suffering from as-yet unexplained skin conditions, to do such hazardous work unprotected
11 demonstrates once again the utter indifference Dublin administrators show to residents’ well-
12 being.

13 Accordingly, the Court should order BOP [REDACTED]
14 [REDACTED] utilizing an independent third party medical provider
15 to conduct the assessments outside of the presence of Dublin staff. The Court should also issue an
16 immediate order enjoining BOP from requiring Dublin residents to clean or otherwise work in or
17 near spaces with mold and other environmental hazards, either in preparation for Court-ordered
18 inspections or otherwise.

19
20 DATED: February 29, 2024

Respectfully submitted,

21 ARNOLD & PORTER KAYE SCHOLER LLP

22
23 By: /s/ Stephen Cha-Kim
Stephen Cha-Kim

24
25 Attorneys for Plaintiffs

26
27 _____
28 ² T.R., C.A., and L.R. are not named plaintiffs, nor did they previously submit declarations
or testify during the evidentiary hearing.